

CORPORATE POLICY AND PROCEDURE



POLICY	Council Vacancy
CATEGORY	Corporate
AUTHORITY	City Clerk's Office
APPROVED BY	City Council
EFFECTIVE DATE	October 23, 2017
REVISION DATE	

POLICY STATEMENT

The City of Guelph is committed to open, accountable and transparent government.

PURPOSE

In accordance with the Municipal Act, S.O. 2001, c.25, when the seat of a member of Council becomes vacant during the term of office, Council may fill a vacancy by appointing a person who has consented to accept the office if appointed, or requiring that a by-election be held to fill a vacancy in accordance with the Municipal Elections Act, S.O., 1996, c.32

The purpose of this policy is to provide for an accountable and transparent process for the filling of Council vacancies which occur during a term of office.

SCOPE

This procedure applies to any Council office declared vacant on City Council during the term of Council.

DEFINITIONS

"Act" means the Municipal Act, S.O. 2001, c. 25 as amended.

"Appointment" means the appointment of a qualified individual, by majority vote of Council, to fill a vacancy on Council for the remainder of the current Council term.

"By-Election" means an election, other than a regular election, held to fill a vacancy on Council and that is conducted in accordance with the Municipal Elections Act, 1996, as amended.

“Candidate” means an individual seeking to be appointed to fill a vacancy in the office of the Councillor, having met the eligibility requirements and who has completed the requisite documentation as required by this policy.

“Clerk” means the Clerk or his/her designate of the City of Guelph as appointed by Council.

“Council” means the Council of the City of Guelph.

“Eligible Elector” has the same meaning as defined by the Act, namely a person:

- a) Who is a resident of the City of Guelph, or an owner or tenant of land in the City or a spouse of such owner or tenant;
- b) Who is Canadian Citizen;
- c) Who is at least 18 years old; and
- d) Who is not prohibited from voting under any other Act or from holding municipal office.

“Lot” means a method of determination by placing the names of the nominees/candidates on equal size pieces of paper and placed in a container with one name being drawn by the Clerk, or his/her designate.

“Municipal Elections Act” means the Municipal Elections Act, S.O. 1996, c.32, as amended.

“Nominee” means those individuals seeking to fill a vacancy on Council who meet the eligibility requirements and who have completed the requisite documentation as outlined in this policy.

“Regular Election Year” means the year established for a regular municipal election in accordance with the Municipal Elections Act, 1996, as amended.

“Term of Office” means the period of time a Member is elected to hold office for which he/she is elected in accordance with the Municipal Elections Act, 1996, as amended.

“Vacancy” means when a seat on Council has become vacant in a manner described by the Act.

GENERAL

1. Council is required to declare a seat vacant in accordance with Section 262(1) the Act.
2. Council shall determine whether to fill the vacancy, within 60 days after the day a declaration of vacancy, in accordance with Section 263 of the Act, by either:
 - a) appointing a person who has consented to accept the office if appointed; or
 - b) passing a by-law requiring a by-election be held to fill the vacancy.

Exceptions to Section 263 include:

- a) Section 65(2) of the Municipal Elections Act that no by-election shall be held to fill an office if the vacancy occurs after March 31 in the year of a regular election; and
 - b) Section 263(5)(b) if a vacancy occurs within 90 days before Voting Day of a regular election, the municipality is not required to fill the vacancy.
3. The vote to appoint a member to the vacancy shall occur at an open Special Meeting of Council.
4. In making its determination, Council will consider the costs and timelines associated with filling a vacancy by appointment or by by-election.
5. Council may waive the Council Vacancy policy at any time, requiring a two-thirds majority vote to carry.
6. Appointment procedures with respect to this policy are contained as:

Schedules 1 - Appointment Procedure to Fill Council Vacancy Office of the Mayor; and

Schedule 2 - Appointment Procedure to Fill Council Vacancy Office of Councillor.

Eligibility Requirements

1. Any individual filling a vacancy must meet the eligibility requirements of office as outlined in the Act and the Municipal Elections Act as an eligible elector.
2. If an employee of the City of Guelph seeks appointment or by-election to Council, the employee shall give written notice, in advance, of his or her intention to take unpaid leave. If the employee is appointed to office, they will be deemed to have resigned from their position with the City immediately before making the declaration of office.

POLICY

A. Filling a Vacancy by Appointment

1. Office of the Mayor

If a vacancy in the Office of the Mayor is to be filled by appointment, Council may choose to fill the vacancy by appointing:

- a) A current member of Council in accordance with the Act; or
- b) The candidate who ran for the position that is vacant from the previous election who received the next greatest amount of votes but was not elected; or
- c) Any qualified individual as outlined by the Act.

2. Office of Councillor

If a vacancy in the Office of Councillor is to be filled by appointment, Council may choose to fill the vacancy by either:

- a) The Candidate who ran for the position that is vacant from the previous election who received the next greatest amount of votes but was not elected; or
- b) An open call for individuals for consideration by Council through a public appointment process.

B. Filling a Vacancy by By-election

If a vacancy for either Office of Mayor or Councillor is to be filled by by-election:

- a) Council shall first consider filling the vacancy by the appointment options outlined in Section A of this policy.
- b) If the vacancy cannot be filled by an appointment Council shall then:
 - i. Within 60 days of declaring the seat vacant, pass a by-law to fill the vacancy by by-election;
 - ii. A by-election shall be held in accordance with the Municipal Elections Act;
 - iii. The Clerk or designate shall be responsible for conducting any by-election in accordance with the Municipal Elections Act and all applicable policies and procedures.

RESPONSIBILITIES

Members of Council

Council is responsible for the adoption and application of this policy.

Clerk

The City Clerk or his/her designate shall be responsible for the administration and interpretation of this policy and where appropriate administering the Council Vacancies Procedures.

The City Clerk or his/her designate shall be responsible for conducting any by-election in accordance with the Municipal Elections Act and all applicable policy and procedure.

Schedule 1

Appointment Procedure to Fill Council Vacancy Office of the Mayor

The City Clerk, or designate, shall be responsible for interpreting and where appropriate, facilitating the appointment application process. For the purposes of this procedure, "lot" means a method of determination by placing the names of the candidates on equal size pieces of paper and placed in a container with one name being drawn by the City Clerk, or designate. The City Clerk has the authority to make minor technical amendments to this procedure as may be required from time to time.

Office of the Mayor

1. Council shall declare the seat of the Mayor to be vacant in accordance with the Municipal Act.
2. The vote to appoint a member to the position of Mayor shall occur at an open Special Council meeting.
3. Only written delegation correspondence will be accepted at the Special Council meeting to appoint.
4. Any member of Council wishing to be considered for appointment to the vacancy shall advise the Clerk in writing by 12:00 noon, five business days prior to the Special Council meeting.
5. If there are no members of Council who advise that they wished to be considered for appointment to the vacancy, Council may fill the vacancy by appointment from Previous Election Candidates as set out in Schedule 2 of the Council Vacancy policy.
6. At the meeting, the following shall take place:
 - a) The Chair shall make a short statement of the purpose of the meeting and the general order of proceedings to be followed.
 - b) Members of Council seeking appointment (candidates) shall declare a pecuniary conflict of interest.
 - c) The Clerk will provide to the Chair a list of the names of those Members of Council who have indicated in writing their interest in being appointed to the vacancy and the Chair will call for a motion from Council in the following form:

THAT the following candidates, who have signified in writing their interest in being appointed to the office of Mayor, be considered for

appointment to fill such vacancy.

- d) Each of the candidates shall be afforded the opportunity to address Council for a period of not more than five minutes. The order of speaking will be determined by lot.
- e) Each member of Council not being considered for the appointment will be allowed no more than one question to each candidate.
- f) Upon hearing all the submissions of the candidates, Council will proceed to vote as follows:
 - i. Members of Council will vote by way of public vote;
 - ii. If the candidate receiving the greatest number of votes cast does not receive more than one-half the votes of all voting members of Council, the candidate or candidates who received the fewest number of votes shall be excluded from consideration. The vote will be taken again by the Clerk and, if necessary, more than once, excluding in each successive vote the candidate or candidates who received the fewest number of votes. This shall be repeated until the candidate receiving the greatest number of votes has also received more than one-half of the votes of the voting members of Council;
 - iii. Where the votes cast are equal for all the candidates:
 - 1. If there are three or more candidates remaining, the Clerk shall by lot select one such candidate to be excluded from the subsequent voting;
 - 2. If only two candidates remain, the tie shall be broken and the vacancy shall be filled by the candidate selected by lot, as conducted by the Clerk.
- g) If there is only one person placing their name forward to fill the vacancy or upon conclusion of the voting and drawing of lots, the Clerk will declare the successful candidate.
- h) A by-law confirming the appointment shall be enacted by Council appointing the successful candidate to the office for the remainder of the term of the present Council.

Schedule 2

Appointment Procedure to Fill Council Vacancy Office of Councillor

The City Clerk, or designate, shall be responsible for interpreting and where appropriate, facilitating the appointment application process. For the purposes of this procedure, "lot" means a method of determination by placing the names of the candidates on equal size pieces of paper and placed in a container with one name being drawn by the City Clerk, or designate. The City Clerk has the authority to make minor technical amendments to this procedure as may be required from time to time.

A. Appointment from Previous Election Candidates

1. Council shall declare the seat of the member of Council to be vacant in accordance with the Municipal Act.
2. The City Clerk shall provide Council with a report including:
 - a) The details regarding the results of the most recent election for the office of the vacancy.
 - b) Information regarding whether the candidate who received the next greatest amount of votes to those who were elected would be agreeable and able to fill the vacancy.
 - c) If the candidate who received the next greatest amount of votes to those who were elected is able and agreeable to filling the vacancy Council will pass a resolution that that person shall be appointed to fill the vacancy;
 - d) A by-law confirming the appointment shall be enacted by Council appointing the successful nominee to the office for the remainder of the term of the present Council.
3. The vote to appoint a member to the position of Councillor from previous election candidates shall be held within 60 days from the declaration of the vacancy and shall occur at a Council meeting.

B. Appointment by Call for Nominees

1. Within 60 days of declaring a seat vacant, Council shall appoint a new member by by-law.

Notice:

2. The Clerk shall post a Council Vacancy Notice on the City's website, social media and in the local newspaper. The notice shall indicate Council's intention to appoint an individual to fill a vacancy, the requirements to be considered for an appointment and the application process.

Application:

3. Any individual wishing to be considered for appointment to fill the Council vacancy will complete and sign the Council Appointment Consent of Nominee Form and a Council Vacancy Declaration of Qualifications Form approved by the City Clerk. Applications for the vacant seat may be filed with the City Clerk commencing at 8:30 a.m. on the day following City Council's decision to adopt an appointment process. Candidates shall submit forms to the City Clerk in person by the deadline to be established by the City Clerk.
4. Any individual wishing to be considered for appointment to fill the Council vacancy will be required to provide identification to prove his or her identity and qualifying address to the satisfaction of the City Clerk.
5. Candidates may submit a personal statement of qualifications, to a maximum of 5 pages in length, with the application, for consideration of Council.
6. It is the candidate's sole responsibility to meet any deadline, complete the application or otherwise comply with any requirements of this procedure.
7. The City Clerk will create a list of all eligible candidates that have complied with the application process. All applications shall be considered public documents and will be made available for public viewing in the same way as a nomination form for a candidate in a municipal election or by-election and shall be available for viewing in the Clerk's Office at City Hall, 1 Carden Street, Guelph, Ontario.
8. Copies of all application documents will be included with the agenda package for the Special Council meeting and will be made available as part of the public agenda posted on the City's website.
9. A candidate who wishes to withdraw his/her application may do so in person and in writing to the City Clerk. The deadline for any withdrawal shall be any time up to 10:00 a.m. on the Friday before the date of the special City Council meeting to fill the vacancy.

Council Meeting:

10. The vote to appoint a candidate shall occur at an open Council Meeting. The meeting shall be a Special Council meeting called for that purpose. No verbal delegations are permitted only written delegation correspondence will be accepted. All qualified candidates who have submitted an application for the

vacant seat will be notified by the City Clerk of the date and time of the special meeting of Council, at which time they may address Council.

11. At the meeting, the following shall take place:

- a) The Chair shall make a short statement of the purpose of the meeting and the general order of the proceedings to be followed;
- b) The City Clerk will provide a list of qualified candidates who have completed the Council Appointment Consent of Nominee and Council Vacancy Declaration of Qualifications forms;
- c) Each candidate will be afforded an opportunity to address Council for a period not to exceed five minutes;
- d) The order of speaking will be determined by lot, where first drawn will be afforded the opportunity to speak first and so on;
- e) All candidates shall be asked the same four questions which will be pre-determined based on input by Council;
- f) Candidates will be sequestered in an adjacent room until it is their time to answer the questions posed by Council. Once a candidate has answered the questions, they may remain in the Council Chambers.
- g) Upon hearing all candidate submissions, Council will proceed to vote, by way of public ballot vote, in rounds of voting as follows:
 - i. Members of Council will vote by way of ballot;
 - ii. Candidate names will be displayed on the monitors in alphabetical order, in the Council Chamber by the City Clerk;
 - iii. Members of Council will vote for one candidate only;
 - iv. The City Clerk will provide each member of Council with a ballot, with the member's name pre-printed on the ballot;
 - v. The City Clerk will ask the members of Council to cast his or her vote by writing the full name of one (1) Candidate on the ballot;
 - vi. The member of Council shall then sign the ballot; and
 - vii. The City Clerk will collect all marked and signed ballots, and will tabulate the results on the tally sheet to be used for this purpose.
- h) The following procedure shall be used for counting the votes:
 - i. The candidate who receives the votes of more than one-half of the number of members of Council present and voting shall fill the vacancy.
 - ii. A spoiled or incomplete ballot will be rejected by the City Clerk and the vote taken on the remaining ballots.
 - iii. If the candidate receiving the greatest number of votes cast does not receive more than one-half the votes of all voting members of Council, the candidate or candidates who received the fewest number of votes will be excluded from further consideration. The

name of a candidate or candidates excluded shall be removed from the monitors. The vote will be taken again by the City Clerk and, if necessary, more than once, excluding in each successive vote the candidate or candidates who receive the fewest number of votes. This process will be repeated until the candidate receiving the greatest number of votes has also received more than one-half of the votes of the voting members of Council.

- iv. Where the votes cast are equal for all the candidates and if:
 - a) There are three or more candidates remaining, the City Clerk, will by lot select one such candidate to be excluded from the subsequent voting;
 - b) If only two (2) candidates remain, the tie will be broken by selecting a candidate by lot to fill the vacancy, as conducted by the City Clerk.
 - i) Upon conclusion of the voting, the City Clerk will declare the candidate receiving the votes of more than one-half of the number of voting members of Council or the candidate selected through section (g)(iv)(b).
 - j) The appointment of the candidate will be made by by-law. A by-law confirming the appointment will be enacted by Council.
 - k) The City Clerk will administer the Declaration of Office required by subsection 232(1) of the Municipal Act, at the meeting where the by-law referred to in subsection 11(i) of these procedures is enacted by Council, or as directed by Council.
12. Where a situation occurs that is not otherwise accounted for in these proceedings, the City Clerk shall recommend an alternate process to Council, which Council may adopt with a simple majority vote.